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16 UNITED STATES BANKRUPTCY COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

18 In re	)	<b>Case No. 19-30089</b>
19 PACIFIC GAS AND ELECTRIC	)	Chapter 11
20 COMPANY,	)	
	)	
21 Debtor.	)	
	)	
22 In re	)	<b>Case No. 19-30088</b>
23 PG&E CORP.,	)	Chapter 11
	)	
24 Debtor.	)	<b>SONOMA CLEAN POWER AUTHORITY'S</b>
	)	<b>STATEMENT OF SUPPORT FOR DEBTORS'</b>
	)	<b>PUBLIC PROGRAMS MOTION AND</b>
	)	<b>RESERVATION OF RIGHTS</b>
	)	
26 Date:	January 29, 2019	
26 Time:	1:30 p.m.	
27 Courtroom:	17	
27 Place:	450 Golden Gate Ave., 16 <sup>th</sup> Floor	
28 Judge:	Hon. Dennis Montali	

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Sonoma Clean Power Authority, a California joint powers authority<sup>1</sup> and a “governmental unit” (as defined in Bankruptcy Code section 101(27)) (“SCPA”), submits this Statement of Support for the Debtors’ Public Programs Motion (the “Motion”) and Reservation of Rights. This Statement is joined by the additional Community Choice Aggregators (“CCAs”) that are identified above and in the attached signature pages. Separate joinders in separate pleadings also may be filed by other CCAs and affiliated entities.

**I. STATEMENT OF SUPPORT FOR CCA PROTECTIONS, AS DESCRIBED IN EXHIBIT A AND THE MOTION**

Representatives of SCPA and Pacific Gas and Electric Company (together with PG&E Corp., “PG&E”) have met and conferred prior to this filing regarding Community Choice Aggregators’ (“CCAs”) requests for certain protections for Community Choice Aggregators (“CCAs”) in connection with the Motion, including with respect to what is defined herein as “CCA Customer Revenue” (and constituting “public funds” of SCPA) under “PG&E’s Regulated Tariffs” and other laws and regulations, that will entitle PG&E (a) timely to perform its obligations to the CCAs as defined in those applicable California laws and regulations, including without limitation Assembly Bill (“AB”) 117 (2002) and Senate Bill (“SB”) 790 (2011) and PG&E Electric Rule 23, including those CCAs appearing in this matter, and (b) to comply timely in accordance with those laws and regulations, including as implemented in the California Public Utilities Commission (“CPUC”) required and approved CCA Service Agreement (PG&E Electric Sample Form No. 79-1029) between each CCA and PG&E that incorporate and embody those laws and regulations with the force of law.

In response to PG&E's request, CCAs prepared and proposed a CCA consensus insert in the form of **Exhibit A** for this court's approval order. The CCA's proposal reflects CCA needs for clarity for CCA lenders, suppliers, and other constituents. CCAs provided a copy of the language set forth in **Exhibit A** to PG&E.

<sup>1</sup> The governmental units that are members of the SCPA joint powers authority are Cloverdale, Cotati, Petaluma, Santa Rosa, Rohnert Park, Sebastopol, Sonoma, Sonoma County (unincorporated areas), Windsor, Fort Bragg, Willits, Point Arena, and Mendocino County (unincorporated areas). (Declaration of Geoffrey G. Syphers, ¶ 7.)

1           The protections set forth in **Exhibit A** are consistent with PG&E's statements in its Public  
2 Program Motion (Docket No. 16 in both cases).

3           The CCA protections set forth in **Exhibit A** and the Motion are also fully consistent with  
4 PG&E's statements to the CPUC on January 23, 2019<sup>2</sup> and with analysis included in the CPUC's  
5 decision adopted at the CPUC's emergency meeting held on January 28, 2019:

6           PG&E also noted that it acts as a billing agent on behalf of Community  
7 Choice Aggregators (CCA) in its service territory and the revenue it  
8 collects is not part of the assets secured by the DIP financing. The  
9 Commission expects PG&E to continue its obligation to act as a billing  
agent for CCAs, Energy Service Providers, and Core Transport Agents  
consistent with the statements of PG&E at the PHC.<sup>3</sup>

10          For the purpose of this Statement of Support and the accompanying Declaration of  
11 Geoffrey G. Syphers, the following definitions shall apply:

12          “CCA Customer Revenue” shall mean charges applied by a CCA to its CCA customers,  
13 which charges are billed and collected by PG&E as the exclusive statutory and regulatory billing

14          

---

<sup>2</sup> On January 23, 2019 at the CPUC prehearing conference related to PG&E's request for statutory  
15 exemptions in connection with PG&E's DIP financing, PG&E's counsel Henry Weissmann  
affirmed PG&E's lack of ownership in the CCA Customer Revenue:

16          ALJ COOKE: Did the terms for the DIP spell out what assets are being  
17 encumbered or used for securitization?

18          MR. WEISSMANN: It is a general statement as is typical in a DIP  
19 Loan. So it's basically assets that are owned by the utility. I do want to  
clarify in this regard that it only applies to assets owned by the Utility.  
20 So if there are assets, as there are, which belong to third-parties, those  
21 are not subject to the security interest under the DIP Loan. So for an  
example, there are CCA representatives here. *CCA Revenue is collected  
by the Utility as a billing agent for CCAs. So that money belongs to the  
CCAs and is not part of the security interest that's granted.*

22          Reporter's Transcript (“RT”), 80:4-21, January 23, 2019 Prehearing Conference, “Application of  
23 Pacific Gas and Electric Company to Increase Its Authority to Finance Short-Term Borrowing  
24 Needs and Procurement Related Collateral Costs by \$2.0 Billion to an Aggregate Amount Not to  
Exceed \$6.0 Billion,” CPUC Docket No. A.18-10-003 (emphasis added). PG&E's request for  
25 statutory exemptions in connection with PG&E's DIP financing is also being concurrently  
addressed in CPUC Docket No. A.18-11-001.

26          <sup>3</sup> *Decision Granting Pacific Gas and Electric Company an Exemption From Public Utilities Code  
27 Sections 823 and 851 for the Limited Purpose of Debtor-in-Possession Financing*, issued in  
CPUC Docket No. A.18-10-003 at 14. (An identical analysis is included in the CPUC's final  
decision issued in CPUC Docket No. A.18-11-001 at p. 15.)

1 agent/servicer on behalf of a CCA for energy provided by a CCA to serve its customers, whether  
2 pre- or post-petition, and any funds collected and held by PG&E on account of such charges, as  
3 further described in PG&E Electric Rule No. 23, Section Q, Subsections 1, 3 and 4, such CPUC  
4 approved CCA Service Agreements (defined below), and other amounts recoverable from PG&E  
5 by any CCA thereunder, consistent with the rights of each CCA under Section 541(d) of the  
6 Bankruptcy Code and applicable non-bankruptcy law and regulations, including by the CCA  
7 Service Agreements implementing those laws and regulations pursuant to PG&E Regulated  
8 Tariffs.

9 “CCA Service Agreement” shall mean the form agreement (Standard Form 79-1029)  
10 included as part of PG&E’s Regulated Tariffs that applies PG&E’s rules and other tariff  
11 provisions to CCA service as a “force of law” contract.<sup>4</sup> PG&E’s “Electric Sample Form No. 79-

12

13 <sup>4</sup> SCPA refers to the CCA Service Agreements and other CPUC approved and required contracts  
14 and CPUC tariffs as “force of law contracts,” because they are distinguished from executory  
15 contracts under Bankruptcy Code § 365 and cannot and should not be rejected by PG&E. PG&E  
16 cannot reject its obligations under laws or regulations, even if they are implemented by CCA  
17 contracts that are required by such tariffs, laws or regulations. *See, e.g., Wah Chang v. Duke*  
18 *Energy Trading & Mktg., LLC*, 507 F.3d 1222 (9th Cir. 2007) (barring retail purchaser from  
19 challenging anticompetitive conduct in wholesale electricity market because rates in purchase  
20 contract were the result of FERC jurisdictional tariff); *In re Calpine Corp.*, 337 B.R. 27, 35  
21 (Bankr. S.D.N.Y. 2006) (dismissing debtor-in-possession’s motions to reject energy contracts  
22 because rejection would directly interfere with FERC jurisdiction and constitute collateral attack  
23 on filed rates); *In Re NextWave Pers. Commc’ns, Inc.*, 200 F.3d 43, 55 (2d Cir. 1999), *aff’d, FCC*  
24 *v. NextWave Pers. Commc’ns, Inc.*, 537 U.S. 293, 299 (2003) (holding that bankruptcy court has  
25 jurisdiction over those transactions that “do not touch upon” a regulatory agency’s authority);  
*Garland & LaChance Const. Co., Inc. v. City of Keene*, 144 B.R. 586, 589 (D.N.H. 1991)  
26 (rejecting, in abstention proceeding, debtor’s characterization of stipulation and decree as a mere  
executory contract, instead finding agreement “to be intimately involved in the ongoing exercise  
of . . . regulatory powers”); *In re Friarton Estates Corp.*, 65 B.R. 586 (Bankr. S.D.N.Y. 1986)  
(finding that the right to reject executory contracts pursuant to Bankruptcy Code § 365 did not  
entitle debtor to reject leases to remove rent-controlled tenants and re-let apartments at higher  
rates) (citing *In Re Quanta Resources Corp.*, 739 F.2d 912, 919 (3rd Cir. 1984), *aff’d sub nom.*,  
474 U.S. 494 (1986) (stating the main principle behind 28 U.S.C. § 959(b), in that the debtor, in  
effecting its plan during bankruptcy, must comply with all applicable federal, state, and local  
laws); *In re Briarcliff*, 15 B.R. 864, 886 (D.N.J. 1981)); *In re St. Mary’s Hospital*, 86 B.R. 393,  
398 (Bankr. E.D. Pa. 1988) (the city could enjoin debtor’s noncompliance with applicable laws  
pursuant to 28 U.S.C. § 959); *In re Garden Manor Associates*, 70 B.R. 477 (Bankr. N.D. Cal.  
1987) (allowing enforcement by HUD of its Regulatory Agreement, implementing its statutory  
and regulatory authority, because it was more than a private contract, as protecting the  
governmental policies at issue).

27 Although CCA issues are distinguishable in some ways from those that are currently the  
28 subject of FERC proceedings and court decisions regarding the bankruptcy rejection of FERC  
filed rate power contracts, FERC and other authorities have also supported force of law arguments

1 1029" states:

2 1.2 The form of this Agreement has been developed as part of the CPUC  
3 regulatory process to implement Assembly Bill 117, was intended to  
4 conform to CPUC directions, was filed and approved by the CPUC for use  
between PG&E and CCAs and may not be waived, altered, amended or  
modified, except as provided herein or in the applicable community choice  
aggregation tariff, or as may otherwise be authorized by the CPUC.

5  
6 The CCA Service Agreement, based on the sample form, is required to conform to CPUC  
7 decisions, contain required elements, and is filed with proposed tariffs. CCAs are required to have

8  
9 like those advanced by CCAs here. CCAs direct this court's attention to the very recent FERC  
10 decision in the *NextEra Energy, Inc. v. Pacific Gas & Electric Co.*, 166 FERC ¶ 61,049 (1/25/19)  
11 ("We conclude that this Commission and the bankruptcy courts have concurrent jurisdiction to  
12 review and address the disposition of wholesale power contracts sought to be rejected through  
13 bankruptcy."). In that decision FERC considered all the arguments of the parties and noted the  
14 "unsettled state of the law" by contrasting *In the Matter of Mirant Corp.*, 378 F.3d 511 (5th Cir.  
15 2004) and *FirstEnergy Solutions Corp. v FERC*, 2018 WL 2315916 (Bankr. N.D. Ohio May 18,  
16 2018) (now on appeal in the Sixth Circuit, Case Nos. 18-3787, 18-3788, 18-4095, 18-4097, 18-  
17 4107, 18-4110) with *In re Calpine Corp.*, 337 B.R. 27 (S.D.N.Y. 2006), and *In re Bos.  
18 Generating, LLC*, No. 10 Civ. 6258, 2010 WL 4616243 (S.D.N.Y. Nov. 12, 2010). CCAs reserve  
19 the issue today, given the specific nature of the relief requested by CCAs herein, since SCPA and  
other CCAs' ownership of the CCA Customer Revenue does not depend on the CCA Service  
20 Agreements, but instead arises from applicable law and regulations that create a whole regulated  
industry that must endure and compel compliance regardless of the fate of the contracts that  
implement and embody such laws and regulations (e.g., AB 117 (2002), SB 790 (2011), Rule 23).  
Among other things, even if those CCA contracts somehow could be rejected in theory, that would  
still result in PG&E causing a statutory breach of the contract, while still being fully obligated and  
accountable, in accordance with 28 U.S.C. § 959(b) and otherwise under the laws and regulations  
implemented in part through CCA contracts. See 28 U.S.C. § 959(b); *Midlantic Nat'l Bank v.  
New Jersey Dept. of Envl. Prot.*, 474 U.S. 494, 505-507, 106 S.Ct. 755, 761-762 (1986) (holding  
trustee may not abandon property in violation of state environmental laws); see also *In re  
Megafoods Stores, Inc.*, 163 F.3d 1063, 1069 (9th Cir. 1998) (discussing how debtors in  
bankruptcy are subject to state tax laws).

21 CPUC-approved CCA Service Agreements are part of tariffs and equivalent to the "filed  
22 rate" that cannot be rejected or modified. See, e.g., *In re Calpine Corp.*, *supra*, 337 B.R. 27 and  
23 our recollection of Judge Montali's tentative ruling in the Qualifying Facilities ("QF") contract  
disputes in the previous PG&E Chapter 11. Not only would PG&E have failed to escape its  
24 burden by rejecting the contract, but it would be worse off, i.e., both (i) subject to the legal,  
regulatory, and political consequences of noncompliance with the laws and regulations that remain  
25 applicable despite rejection, and (ii) liable for damages under Sections 365(g) and 502(g) and  
under some circumstances administrative claims and other consequences for post-petition  
26 wrongdoing, especially if there were any conversion of CCA public funds. Moreover, even if the  
27 business judgment standard were applied to PG&E's decision (as opposed to the heightened  
standard of *In re Mirant Corp.*, *supra*, 378 F.3d at 524-525), there is no rational basis for trying to  
reject such a force of law contract and tariff, especially if PG&E is solvent and still must comply  
with the laws and regulations that continue to empower the CCAs and obligate PG&E. See *In re  
Chi-Feng Huang*, 23 B.R. 789 (B.A.P. 9th Cir. 1983) (denying windfalls to equity holders from  
rejecting executory contracts in Chapter 11 cases where creditors are paid in full).

1 the Service Agreement in place and include it with their registration with the CPUC. The specific  
2 CCA Service Agreement applicable to SCPA was approved by the CPUC in Resolution E-4624  
3 on November 14, 2013, as a PG&E Regulated Tariff. (Declaration of Geoffrey G. Syphers, ¶ 17.)

4 "PG&E's Regulated Tariffs" shall mean electric service tariff provisions that have been  
5 approved and made enforceable by the CPUC, as regulator over PG&E's operations, and therefore  
6 have the force of law<sup>5</sup> with respect to CCA Customer Revenue, including but not limited to PG&E  
7 Electric Rule No. 23 (also known as "Rule 23"), Section Q, Subsections 1, 3 and 4, as applied to  
8 PG&E pursuant to the CCA Service Agreement, consistent with the rights of a CCA under Section  
9 541(d) of the Bankruptcy Code and applicable non-bankruptcy law and regulations. The CPUC's  
10 General Order ("GO") 96-B describes "tariffs" as the following:

11 3.15 Tariffs

12 "Tariffs" refer collectively to the sheets that a utility must file, maintain,  
13 and publish as directed by the Commission, and that set forth the terms  
14 and conditions of the utility's services to its customers; "tariffs" may also  
refer to the individual rates, tolls, rentals, charges, classifications, special  
conditions, and rules of a utility.

15 Similar to that limited interest claimed by a mortgage servicer as referenced in Bankruptcy  
16 Code section 541(d), there clearly is no equitable or beneficial interest of PG&E in CCA  
17 Customer Revenue for reasons stated herein. PG&E repeatedly acknowledges this fact. For

18 \_\_\_\_\_  
19 <sup>5</sup> Several California opinions have concluded that utility tariffs when approved by the CPUC have  
the force of law:

20 Section 489, subdivision (a), requires every public utility to file with the  
21 PUC a tariff—a schedule "showing all rates, tolls, rentals, charges,  
22 and classifications ... together with all rules, contracts, privileges, and  
23 facilities which in any manner affect or relate to rates, tolls, rentals,  
24 classifications, or service." *Such a tariff, when approved by the PUC,  
has the force of law.* (*Trammell v. Western Union Tel. Co.* (1976) 57  
25 Cal.App.3d 538, 549–550, 129 Cal.Rptr. 361.) Only by following  
procedures specified in or developed under section 454 may the utility  
then change its published tariff. *Wood v. Public Utilities  
Commission* (1971) 4 Cal.3d 288, 292–293, 93 Cal.Rptr. 455, 481 P.2d  
823

26 *Pacific Bell v. Public Utilities Com'n* 79 Cal.App.4th 269, 273–274 (2000) (emphasis added.); *see*  
27 *also Southern California Edison Co. v. City of Victorville*, 217 Cal.App.4th 218, 228 (2013); *see*  
28 *also Tesoro Refining & Marketing Company LLC v. Pacific Gas and Electric Company*, 146  
F.Supp.3d 1170, 1182 (N.D. Cal. 2015) (acknowledging tariffs approved by the CPUC have the  
force of law).

1 example, PG&E provides the following response on its website to a frequently asked question:

2 How will I be billed for CCA service?

3 Customers who receive their electric supply from a CCA receive a  
4 consolidated bill issued by PG&E that includes charges from both parties.  
5 This is not a double bill or charge. *PG&E collects payments on behalf of*  
6 the CCA, and these payments are then sent to the CCA.

7 [https://www.pge.com/en\\_US/residential/customer-service/other-services/alternative-energy-providers/community-choice-aggregation/faq.page](https://www.pge.com/en_US/residential/customer-service/other-services/alternative-energy-providers/community-choice-aggregation/faq.page), last visited on January 17, 2019 (italics  
8 added).

9 PG&E has further proposed CCA protections in the Motion to continue to timely remit the  
10 CCA Customer Revenue to SCPA and other CCAs in the ordinary course of business consistent  
11 with applicable state law, PG&E's Regulated Tariffs and other laws, regulations and tariffs.<sup>6</sup> In  
12 addition, the CCAs are requesting similar protections in connection with PG&E's Postpetition  
13 Financing Motion as well to allow for the CCA Customer Revenue, among other things, to be  
14 carved out and excluded from (a) any security interest and lien upon property of the Debtors  
15 granted pursuant to Section 364(c)(2), (3) and/or (d) of the Bankruptcy Code or under any other  
16 authority, and (b) any authorization to use cash collateral under Section 363 of the Bankruptcy  
17 Code or otherwise, except that PG&E shall not be disabled or interfered with in its legal and  
18 regulatory compliance timely to remit the CCA Customer Revenue to the applicable CCA in the  
19 ordinary course of business, consistent with such applicable laws, regulations and CCA Service  
20 Agreements. *See* SCPA's Statement of Support for Debtor's Motion for Postpetition Financing  
21 and Reservation of Rights, which is substantially similar to this Statement and filed  
22 contemporaneously herewith.

23 Based on the CCA protections proposed in **Exhibit A** and the Motion, SCPA's hopes for  
24 further progress in its constructive discussions with PG&E over remaining issues, SCPA supports

25  
26 <sup>6</sup> In the context of the Motion, PG&E refers to these funds and remittances as TPP Funds and TPP  
27 Costs, with the former pertaining to collected amounts from Customers and the latter pertaining to  
28 remittances to, among others, the CCAs. SCPA believes that these terms include what SCPA has  
described as CCA Customer Revenue, and are part of PG&E's Customer Program Obligations  
(see pp. 12 and 26 of the Motion).

1 the Motion, requesting inclusion of CCA protections in the Court's order, while reserving all other  
2 rights and interests as provided in **Exhibit B**. SCPA consents to entry of the final order on the  
3 Motion by the bankruptcy judge as to such **Exhibit A** protections for CCAs, to the extent that can  
4 be done without prejudice to the generally reserved *Stern*<sup>7</sup> and related objections for other disputes  
5 and matters, as described in **Exhibit B**. The comprehensive rights, governmental powers, claims,  
6 and interests of SCPA and other CCAs, fully reserved, are beyond the scope of this filing, but are  
7 more complex than usual for this topic, considering (i) the regulated nature of PG&E by the  
8 CPUC and the Federal Energy Regulatory Commission ("FERC"), (ii) the California statutory and  
9 regulatory regime imposed on PG&E still applicable under 28 U.S.C. § 959(b), and (iii) the  
10 governmental unit character of SCPA and other CCAs with special protections under Senate Bill  
11 ("SB") 790 (2011) and Rule 23. The regulatory power of CPUC also has the force of law.

12 The PUC adopted its Rules of Practice and Procedure pursuant to its  
13 rulemaking authority (Cal. Const., art. XII, § 2; Pub. Util. Code, § 701). A  
14 regulation adopted by an administrative agency under its rulemaking  
authority has the force and effect of law. (Citations omitted.)

15 *Southern California Edison Co. v. Public Utilities Com'n.*, 140 Cal.App.4th 1085, 1092 (2006).

16 Contrary to defendant's contention the statutes and rules of the  
17 commission do impose a direct and positive duty on the operator of a  
18 utility. This is evident from the regulations heretofore quoted. The rules  
19 were promulgated for the safety of workmen as well as the public and civil  
20 penalties are imposed on the utility for failure to comply with them and  
criminal penalties are imposed on the officers and employees of the utility.  
Utilities may not operate except by permission of the commission which  
imposes the duties heretofore set forth together with other regulations  
pertinent to the operation of such organizations.

21 *Snyder v. Southern Cal. Edison Co.*, 44 Cal.2d 793, 801 (1955).

## 22 II. THE CCAS' PURPOSE AND THEIR RELATIONSHIP WITH PG&E

### 23 A. CCAS ARE LOAD SERVING GOVERNMENTAL UNITS WHOSE CCA 24 CUSTOMER REVENUE IS BILLED AND COLLECTED BY PG&E AS 25 AGENT AND REMITTED TO THE CCA UNDER OBLIGATIONS IMPOSED BY STATUTE, REGULATION AND CPUC-APPROVED CONTRACT AGREEMENTS AND TARIFFS.

26 SCPA is a CCA, established pursuant to Assembly Bill ("AB") 117 adopted in 2002,

27  
28 <sup>7</sup> *Stern v. Marshall*, 564 U.S. 462 (2011).

1 following the 2001-2002 California Energy Crisis. In response to the California Energy Crisis, the  
2 California Legislature created CCAs as an alternative to and an exception to the investor-owned  
3 utility (“IOUs”) monopoly over electricity sales to customers. The specific, distinct and important  
4 role of CCAs as an IOU alternative in California’s energy markets and renewable energy future  
5 and the requirement that IOUs co-exist alongside CCAs was further reinforced with passage by  
6 the California Legislature of SB 790 in 2011.<sup>8</sup>

7 CCA programs are delivered to CCA customers by governmental units enabled under  
8 California law to purchase and aggregate energy on behalf of their community members. CCA  
9 programs are administered by local governments (at present as joint power authorities created by  
10 various cities and counties, such as SCPA, or as an enterprise fund within a single city or county)  
11 with a mission to provide competitive clean energy alternatives to IOU sources, such as PG&E.  
12 When a city, county or joint powers agency implements or joins a CCA program, all PG&E  
13 residential customers within the CCA program’s service area automatically become customers of  
14 the CCA, unless they choose to opt out. CCAs provide reliable service, a power mix with more  
15 renewable and/or greenhouse gas-free energy than required by law at competitive rates,  
16 and innovative programs that benefit people, the environment, and the economy in communities in  
17 PG&E’s territory and across California. (Declaration of Geoffrey G. Syphers, ¶¶ 8, 9, 12.)

18 Statewide, 19 CCAs, including SCPA, independently procure energy and provide a wide  
19 array of services directly to over **8 million CCA customers (more than 2.5 million customer**  
20 **accounts)**. CCAs are an essential and growing part of the State’s clean energy mandates. In the  
21 PG&E territory, approximately **41%** of the load will be served by CCAs in 2019, absent any  
22 disruption by this case which SCPA is constructively working with PG&E to avoid. As of  
23 August 2018, the 11 Northern California CCAs in PG&E territory have executed contracts totaling  
24 **1,239 megawatts (“MW”) of renewable energy from new California facilities** with commercial

25  
26 <sup>8</sup> See, e.g., SB 790; Sec. 2(d) (“The Public Utilities Commission has found that conduct by  
27 electrical corporations to oppose community choice aggregation programs has had the effect of  
causing community choice aggregation programs to be abandoned.”) and Sec. 2(g) (“California  
has a substantial governmental interest in ensuring that conduct by electrical corporations does not  
threaten the consideration, development, and implementation of community choice aggregation  
programs”).

1 operation dates between 2018 and 2021. (Declaration of Geoffrey G. Syphers, ¶¶ 25-26.)

2 Pursuant to applicable state law, PG&E's Regulated Tariffs and other laws, regulations and  
3 tariffs, PG&E is mandated to provide both (i) transmission and distribution services to deliver  
4 energy procured by CCAs for their customers, as well as (ii) billing and collection services for  
5 CCAs' benefit as to CCA customers using CCA energy. CCA customers receive their energy from  
6 the CCA rather than the IOU, unless they opt out. As a result, CCAs are load-serving  
7 governmental units responsible for securing sufficient electricity supplies to meet the needs of  
8 their customers. (Declaration of Geoffrey G. Syphers, ¶¶ 27, 28.)

9 The CCAs are mandated by state law to use the IOUs, like PG&E, as their exclusive  
10 billing and collection agents. There is no provision for a "back-up" billing and collection agent –  
11 the CCAs have no choice other than the IOUs.

12 Expansion of CCA programs did not change the consolidated billing practices of the IOUs.  
13 The bills sent by PG&E to CCA customers break out CCA charges from PG&E's own charges, so  
14 that CCA customers always know how much they are paying to their CCA for energy. However,  
15 the separate CCA charges and PG&E charges still are delivered through a single, consolidated bill.  
16 (Declaration of Geoffrey G. Syphers, ¶ 18.)

17 In light of this consolidated billing arrangement, disruption of CCA Customer Revenue  
18 timely being paid to CCAs would materially interfere with energy supplies, causing serious adverse  
19 consequences. SCPA alone received \$173.1 million in 2018 revenue from more than 223,000 CCA  
20 customers, all of which was CCA Customer Revenue. (Declaration of Geoffrey G. Syphers, ¶ 13.)

21 **B. PG&E HAS NO OWNERSHIP OR BENEFICIAL INTEREST IN THE CCA  
22 CUSTOMER REVENUE.**

23 As further described below, in fulfilling its statutorily and regulatorily mandated billing  
24 and collection agent role for CCAs, PG&E functions like the mortgage servicer referenced in  
25 Bankruptcy Code section 541(d), except that CCAs' ownership of those public funds is not just  
26 protected by PG&E's Regulated Tariffs, including the CPUC-approved force of law CCA Service  
27 Agreements, and other laws, regulations and tariffs, but also directly by the obligation of PG&E as  
28 a chapter 11 debtor in possession to abide by those laws, regulations and tariffs under 28 U.S.C. §

1 959(b) and otherwise, consistent with its fiduciary duties to CCAs.

2 Again, as noted above, PG&E's lack of ownership of the CCA Customer Revenue and its  
3 billing service responsibility has been recently confirmed in the CPUC's decision adopted at the  
4 CPUC's emergency meeting held on January 28, 2019:

5 PG&E also noted that it acts as a billing agent on behalf of Community  
6 Choice Aggregators (CCA) in its service territory and the revenue it  
7 collects is not part of the assets secured by the DIP financing. The  
8 Commission expects PG&E to continue its obligation to act as a billing  
agent for CCAs, Energy Service Providers, and Core Transport Agents  
consistent with the statements of PG&E and the PHC.

9 See footnote 3, *supra*. Likewise, PG&E's own documents regarding the fees associated with  
10 consolidated billing on behalf of CCAs repeatedly delineate between fees owing to PG&E and  
11 fees owing to CCAs.<sup>9</sup>

12 \_\_\_\_\_  
13 <sup>9</sup> PG&E's own documents supporting CCAs' position include:

14 (a) *Electric Schedule E-CCA Services to Community Choice Aggregators*: In  
15 laying out the fees associated with consolidated billing, PG&E provided the  
following description of services:

16 Composite Bill-Ready Billing Fee

17 This fee covers the cost to present the CCA's energy and customer  
18 charges. It also includes cost to process the CCA's energy charges and  
customer payments.

19 ....  
20 Composite Rate-Ready Billing Fee

21 This fee covers the cost to present the CCA's energy and customer  
22 charges on an additional bill page. It also includes cost to process the  
23 CCA's energy charges and customer payments, and respond to CCA  
calls regarding billing issues. (Section 7, a. & 8, a.)

24 (b) *Electric Rule 23 Community Choice Aggregation Service*

25 Section P. Billing Service Obligations:

26 (a) Description

27 PG&E shall provide two options for Consolidated PG&E Billing:

28 (1) Rate Ready – The customer's CCA shall send its rates to PG&E.  
29 PG&E shall in turn send a consolidated bill, containing both PG&E  
and CCA charges to the customer.

30 (2) Bill Ready – The customer's CCA shall send its bill to PG&E.

1           The normal and uninterrupted billing of customers and remittance of CCA Customer  
2 Revenue through PG&E to CCAs (as CCA owned proceeds and public funds) is of the ***utmost***  
3 importance in order for CCAs to meet their own obligations to their customers, suppliers,  
4 contractors, and lenders. This is critical, because, as described above, PG&E is identified in the  
5 statute as the *exclusive billing agent*, and CCAs presently have *no option to utilize another billing*

6  
7           PG&E shall in turn send a consolidated bill, containing both PG&E  
8 and CCA charges, to the customer.

9           2. Billing Information and Inserts

10           (a) Identify PG&E and CCA Charges

11           The consolidated PG&E bill, at a minimum, shall identify utility  
12 charges as specified by the Commission or its codes and when CCA  
13 charges are received shall identify, at a minimum, two sets of  
14 charges: *one for PG&E services and another for CCA energy*  
15 *services.*

16           Section Q. Payment and Collection Terms

17           1. PG&E shall pay the CCA the amounts paid to the utility for CCA  
18 charges only after the payment is received from the customer.  
19 Payments shall be transferred to the CCA electronically specifying  
20 the amount paid by each specific customer account or group of  
21 customer accounts if the customer is Summary Billed.

22           2. ...

23           3. PG&E shall remit payments to the CCA only for the amounts paid  
24 by the CCA customer for payment of CCA charges. Payments are  
25 due on or before the later of:

26           (a) Seventeen (17) calendar days after the bill was rendered to the  
27 customer, or

28           (b) The next business day after the payment is received from the  
customer.

29           4. PG&E shall process payments, post utility charges paid to customer  
30 accounts, and transfer funds owed the CCA to the CCA. PG&E shall  
31 debit to the CCA any amounts resulting from returned payments and  
32 assess returned payment charges (i.e., a charge for each returned  
33 payment) to the appropriate customers.

34           5. ...

35           6. The customer is obligated to pay PG&E for all utility and CCA  
36 charges consistent with existing tariffs.

1 *agent* for their billing and collection. Any interruption in this billing process would have serious  
2 adverse consequences for all parties and create significant risk and volatility to the State's energy  
3 market.

4 The CCA protections proposed in **Exhibit A** and the Motion is exactly what is expected of  
5 PG&E under CCA Service Agreements, applicable state law, PG&E's Regulated Tariffs and other  
6 laws, regulations and tariffs. SCPA appreciates that PG&E acknowledges its role as collecting  
7 "payments on behalf of the CCA." *See* footnote 2, *supra*. However, additional assurances in the  
8 early stages of this Chapter 11 case, such as those in **Exhibit A**, are necessary and appropriate to  
9 avoid interruption in remittances to CCAs, conflicts with DIP lenders or others who might  
10 misunderstand the situation, resulting in adverse consequences for all parties in interest in the  
11 event of any noncompliance by PG&E or any DIP lenders' interference with CCAs' public funds  
12 through any overbroad DIP Loan arrangements.

13 **III. SCPA'S REBUTTALS TO ANY OPPOSITION TO THE PROPOSED PG&E**  
14 **ACCOMMODATIONS TO CCAS.**

15 Because these issues are raised in First Day Motions, where it is not possible to anticipate  
16 all oppositions to the proposed CCA protections in **Exhibit A** and the Motion, SCPA offers these  
17 comments to dispel any unfounded concerns or objections that may be raised at the hearing,  
18 particularly by creditors who do not understand how CCAs operate and their importance in the  
19 California energy system. SCPA welcomes the opportunity to explain why the CCA-protective  
20 language set forth in **Exhibit A** and the Motion is necessary and in the best interest of all parties-  
21 in-interest. Any battle with any other party-in-interest over CCA Customer Revenue or other  
22 rights, assets or claims would have serious adverse effects on the Chapter 11 estate and the  
23 provision of electricity within the territory of PG&E. That is why PG&E is now doing the right  
24 thing, consistent with its fiduciary duties as a debtor in possession and its stated statutory,  
25 regulatory and tariff duties to CCAs.

26 As set forth in footnote 4, *supra*, the relief described in **Exhibit A** and the Motion is  
27 necessary to ensure PG&E continues, as required by 28 U.S.C. §959(b) to comply with applicable  
28 law, regulations, and tariffs. It does not expand the rights of CCAs. *See, e.g.*, 11 U.S.C. § 541(d);

1 H.R. REP. 95-595, 368, 1978 U.S.C.C.A.N. 5963, 6324; PG&E Electric Rule No. 23 (especially  
2 Section Q); *In re Columbia Gas Systems Inc.*, 997 F.2d 1039, 1061 (3d Cir. 1993) (where refunds  
3 were being provided from gas suppliers through a utility to customers, and where a party acts as a  
4 “mere conduit” for funds, such party does not hold an equitable interest). Cases in the Northern  
5 District of California have also found a “resulting” trust in similar situations. *See, e.g., Aikin v.*  
6 *Neilson (In re Cedar Funding, Inc.)*, No. C 09-4311 RMW, 2012 WL 1110023, at \*4 (N.D. Cal.  
7 Mar. 31, 2012); *In re Guy F. Atkinson & Co.*, No. C 98-4577 SL, 2000 WL 52317, at \*1 (N. D.  
8 Cal. Jan. 18, 2000) (concerning partial summary judgment granted by Judge Carlson imposing a  
9 resulting trust in favor of Yale University for funds transferred to a division of Debtor that were  
10 commingled in the Debtor’s contractor deposit account and claimed by bank as collateral under its  
11 security agreement with Debtor.)

12 No one should interfere with PG&E performing for CCAs its fiduciary duties as described  
13 in *In re Cochise College Park, Inc.*, 703 F.2d 1339, 1356-57 (9th Cir. 1983) and other precedents,  
14 especially as to governmental units the Legislature has directed to operate on par with PG&E.  
15 Wisely, PG&E is mindful of the need for cooperation in timely doing the right thing to maintain  
16 the ordinary course of business and the *status quo* and accommodate SCPA and the other CCAs in  
17 promptly resolving these issues.

18 Clearly, choosing to comply with its existing obligations under applicable laws and  
19 regulations is a valid exercise of PG&E’s business judgment. Such an exercise of its business  
20 judgment is particularly appropriate in light of the fact that PG&E is heavily regulated by the State  
21 of California, which has enhanced CCA protections in recognition of the need to protect CCAs in  
22 order to further the State’s renewable energy and greenhouse gas reduction goals. The legislative  
23 findings in support of the enhanced protections for CCAs in SB 790, include the following  
24 illustrations and more:<sup>10</sup>

25  
26 <sup>10</sup> Also note the following CPUC Decisions:  
27  
28

*D.05-12-04*. In discussing “Customer Deposits, Partial Payments and Termination Service”  
the CPUC determined that IOUs and CCAs should collect their own deposits. The CPUC stated  
the following:

1 SEC. 2. The Legislature finds and declares all of the following:

2 (a) It is the policy of the state to provide for the consideration, formation, and  
3 implementation of community choice aggregation programs authorized in Section  
4 366.2 of the Public Utilities Code.

5 (b) Since community choice aggregation programs were first authorized in 2002,  
6 only one community choice aggregation program has been implemented.

7 (c) Electrical corporations [e.g., PG&E] have inherent market power derived from,  
8 among other things, name recognition among customers, longstanding  
9 relationships with customers, joint control over regulated operations and  
competitive generation services, access to competitive customer information, and  
the potential to cross-subsidize competitive generation services.

10 (d) The Public Utilities Commission has found that conduct by electrical  
11 corporations to oppose community choice aggregation programs has had the effect  
12 of causing community choice aggregation programs to be abandoned.

13 (e) The Public Utilities Commission has made considerable progress in identifying  
14 and addressing the conduct that has hindered the creation of community choice  
15 aggregation programs, and it is now appropriate to further address these issues in  
statute.

16 (f) The exercise of market power by electrical corporations [e.g., PG&E] is a  
17 deterrent to the consideration, development, and implementation of community  
choice aggregation programs.

18  
19 We adopt the utilities' proposal that each entity collect its own deposits  
20 (although the CCA may collect the deposits using the utility's billing services).  
21 While this policy may require some customers to pay two deposits, we have  
22 consistently treated CCAs as stand-alone operations with ratemaking discretion.  
(p. 42.)

23 D.04-12-046. "SCE and SDG&E state they will have incremental billing costs because  
they will have to receive usage and other information from the CCA, then bill the customer on a  
separate page from the utility's bill, then remit the payments to the CCA." (p. 16-17.) The CPUC  
then determined that incremental billing costs should be allocated to the CCAs, and that the IOUs'  
24 billing processing fees should be unbundled.

25 D.15-09-013. As a CCA, LCE will offer generation procurement service to its residents  
and businesses while SCE will continue to provide transmission and distribution service to those  
26 customers plus metering, billing and other services on behalf of LCE. These metering, billing and  
other services are detailed in SCE's principal CCA fee schedule, tariff Schedule CCA-SF  
(Community Choice Aggregation Service Fees). (p. 1.)

(g) California has a substantial governmental interest in ensuring that conduct by electrical corporations does not threaten the consideration, development, and implementation of community choice aggregation programs.

(h) It is therefore necessary to establish a code of conduct, associated rules, and enforcement procedures, applicable to electrical corporations [e.g., PG&E] in order to facilitate the consideration, development, and implementation of community choice aggregation programs, to foster fair competition, and to protect against cross-subsidization by ratepayers.

(brackets added.)

Public Utilities Code, 366.2(a)(9) states in part:

... Electrical corporations [e.g., PG&E] shall continue to provide all metering, *billing*, collection, and customer service to retail customers that participate in community choice aggregation programs. *Bills sent by the electrical corporation to retail customers shall identify the community choice aggregator as providing the electrical energy component of the bill.* The commission shall determine the terms and conditions under which the electrical corporation [e.g., PG&E] provides services to community choice aggregators and retail customers.

(brackets and italics added). Consider also the *Legislative History for Public Utilities Code*, 366:2:

**COMMENTS:** Community aggregation is direct access on a large scale, similar to formation of a municipal utility, except that a municipal utility is self-governing, must purchase power or build plants and transmission lines, assume responsibility for distribution, billing, and meter-reading. Under aggregation, most of the responsibilities remain with the electrical corporation. The aggregator procures electricity on the wholesale market, to be delivered through the electrical corporation's infrastructure. Under this bill the CPUC would oversee and sanction these transactions.

In the view of SCPA and its allied CCAs, the foregoing statements demonstrate that the CCA protections in **Exhibit A** and the Motion are what is required by law. SCPA and its allied CCAs simply will obtain undisturbed and continuous collection and remittance of CCA Customer Revenue from CCA energy deliveries, program, service and other offerings for CCA customers in accordance with CCA Service Agreements, applicable state law, PG&E's Regulated Tariffs and other laws, regulations and tariffs, free from any claim of lien or security interest thereon by the DIP Lenders.

Accordingly, CCA protections are consistent with both the ownership interests of SCPA and its allied CCAs under Section 541(d) and the obligations of PG&E to comply with applicable law

1 under 28 U.S.C. § 959(b), and to fulfill its assurances to the CPUC cited above concerning the CCA  
2 Customer Revenue.

3  
4 DATED: January 29, 2019.

RESPECTFULLY SUBMITTED,

5  
6 ENGEL LAW, P.C.  
7

By: /s/ G. Larry Engel  
G. Larry Engel

8  
9 -and-

10  
11 BOUTIN JONES INC.  
12 Mark Gorton

13  
14 -and-

15  
16 SONOMA CLEAN POWER AUTHORITY  
17 Jessica R. Mullan, General Counsel

18  
19 *Attorneys for Creditor and Party-in-Interest,*  
20 *SONOMA CLEAN POWER AUTHORITY*

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23  
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27  
28 *Additional CCAs joining this Statement and the signatures of their counsel are on the following*  
16  
17 *pages.*

1                   City and County of San Francisco, on behalf of CleanPowerSF, a program of the San  
2 Francisco Public Utilities Commission, a "governmental unit" (as defined in Bankruptcy Code  
3 section 101), joins this Statement of Support and Reservation of Rights.

4 DATED: January \_\_\_, 2019.

5                   RESPECTFULLY SUBMITTED,

6                   DENNIS J. HERRERA  
7                   City Attorney  
8                   THERESA L. MUELLER  
9                   Chief Energy and Telecommunications Deputy

10                  Attorneys for  
11                  CITY AND COUNTY OF SAN FRANCISCO  
12                  City Hall Room 234  
13                  1 Dr. Carlton B. Goodlett Place  
14                  San Francisco, California 94102-4682  
15                  Telephone: (415) 554-4640  
16                  E-Mail: [theresa.mueller@sfcityatty.org](mailto:theresa.mueller@sfcityatty.org)

17                  By: Theresa Mueller (by SA)  
18                  Theresa L. Mueller

19                  *Attorneys for Creditor, CITY AND COUNTY OF SAN*  
20                  *FRANCISCO on behalf of CLEANPOWERSF and SAN*  
21                  *FRANCISCO PUBLIC UTILITIES COMMISSION*

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22                  SONOMA CLEAN POWER'S STATEMENT OF SUPPORT  
23                  AND RESERVATION OF RIGHTS

*EAST BAY COMMUNITY ENERGY, a Joint Powers Authority*<sup>1</sup> and a “governmental unit” (as defined in Bankruptcy Code section 101), joins the Statement of Support for the Debtors’ Motion for Postpetition Financing and Reservation of Rights.

DATED: January 29, 2019.

RESPECTFULLY SUBMITTED

**EAST BAY COMMUNITY ENERGY**  
Leah S. Goldberg, General Counsel

Oct 17, 1968

By

Leah S. Goldberg  
General Counsel

*Attorneys for Creditor and Party-in-Interest*  
**EAST BAY COMMUNITY ENERGY AUTHORITY**

<sup>27</sup> <sup>28</sup> 1 The governmental units that are members of the East Bay Community Energy Joint Powers Authority are the County of Alameda, and the following cities: Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Oakland, Piedmont, San Leandro, and Union City.

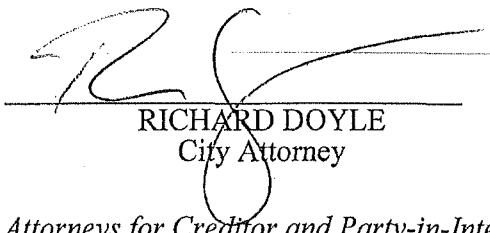
**SONOMA CLEAN POWER AUTHORITY'S STATEMENT OF SUPPORT  
FOR POSTPETITION FINANCING MOTION AND RESERVATION OF RIGHTS**

*City of San José*, a California Charter City (San José Clean Energy), and a “governmental unit” (as defined in Bankruptcy Code section 101), joins the Statement of Support for the Debtors’ Motion for Postpetition Financing and Reservation of Rights.

DATED: January 28, 2019.

Very truly yours,

City of San José



RICHARD DOYLE  
City Attorney

*Attorneys for Creditor and Party-in-Interest  
City of San José*

1                   Silicon Valley Clean Energy Authority, a California joint powers authority and a  
2 "governmental unit" (as defined in Bankruptcy Code section 101), joins the Statement of Support for  
3 the Debtors' Motion for Postpetition Financing and Reservation of Rights.

4 DATED: January \_\_\_, 2019.

5                   RESPECTFULLY SUBMITTED,

6                   SILICON VALLEY CLEAN ENERGY AUTHORITY  
7                   T. Peter Pierce, Assistant General Counsel

8                   By: 

9                   T. Peter Pierce  
Assistant General Counsel

10                  *Attorneys for Creditor and Party-in-Interest*  
11                  SILICON VALLEY CLEAN ENERGY AUTHORITY

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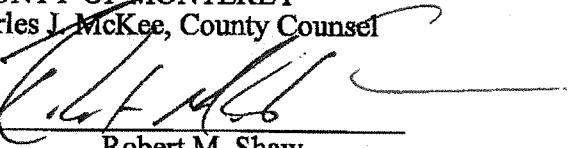
SONOMA CLEAN POWER AUTHORITY'S STATEMENT OF SUPPORT  
FOR POSTPETITION FINANCING MOTION AND RESERVATION OF RIGHTS

1 Monterey Bay Community Power Authority, a California joint powers authority<sup>1</sup> and a  
2 "governmental unit" (as defined in Bankruptcy Code section 101), joins the Statement of Support for  
3 the Debtors' Motion for Post-petition Financing and Reservation of Rights.

4 DATED: January 28, 2019.

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RESPECTFULLY SUBMITTED,

COUNTY OF MONTEREY  
Charles J. McKee, County Counsel

By: 

Robert M. Shaw  
Deputy County Counsel

Attorneys for Creditor, MONTEREY BAY  
COMMUNITY POWER AUTHORITY

<sup>1</sup> The governmental units that are members of Monterey Community Power Authority joint powers agreement are the cities of Santa Cruz, Watsonville, Capitola, Scotts Valley, Salinas, Monterey, Pacific Grove, Carmel, Seaside, Marina, Sand City, Soledad, Greenfield, Gonzales, Hollister, San Juan Bautista, San Luis Obispo, Morro Bay, and the unincorporated areas of Monterey, Santa Cruz and, San Benito Counties

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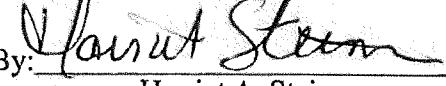
SONOMA CLEAN POWER AUTHORITY'S STATEMENT OF SUPPORT  
FOR POSTPETITION FINANCING MOTION AND RESERVATION OF RIGHTS

1 Valley Clean Energy Alliance, a California joint powers authority<sup>1</sup> and a "governmental  
2 unit" (as defined in Bankruptcy Code section 101), joins the Statement of Support for the Debtors'  
3 Motion for Postpetition Financing and Reservation of Rights.

4 DATED: January 27, 2019.

5 RESPECTFULLY SUBMITTED,

6 BEST BEST & KRIEGER LLP

7 By:   
8 Harriet A. Steiner

9 *Attorneys for Creditor and Party-in-Interest*  
10 **VALLEY CLEAN ENERGY ALLIANCE**

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<sup>1</sup> County of Yolo, City of Davis and City of Woodland.

1 PIONEER COMMUNITY ENERGY, a California joint powers authority<sup>1</sup> and a  
2 "governmental unit" (as defined in Bankruptcy Code section 101), joins the Statement of Support for  
3 the Debtors' Motion for Postpetition Financing and Reservation of Rights.

4 DATED: January 29, 2019.

5 RESPECTFULLY SUBMITTED,

6 NEUMILLER & BEARDSLEE  
7 A PROFESSIONAL CORPORATION

8 By: 

9 CLIFFORD W. STEVENS  
Bankruptcy Counsel

10 *Attorneys for Creditor and Party-in-Interest*  
11 PIONEER COMMUNITY ENERGY

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28 <sup>1</sup> The governmental units that are members of the Pioneer Community Energy joint powers authority are Placer County (unincorporated areas), Auburn, Colfax, Lincoln, Loomis, and Rocklin

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PIONEER COMMUNITY ENERGY'S STATEMENT OF SUPPORT  
FOR POSTPETITION FINANCING MOTION AND RESERVATION OF RIGHTS

# EXHIBIT A

## EXHIBIT A

## REMITTANCE PROTECTION FOR CCAs

*Following discussion of agreed principles, this language has been proposed by CCAs to Debtors:*

Because PG&E is a utility regulated by the California Public Utilities Commission (“CPUC”) pursuant to California State law, this Court only intends to approve preemption of those laws and regulations when it does so expressly, and not by implication by any general approval of any First Day Motions where they conflict with such law and regulation. The Court also wishes to avoid PG&E suffering under any inconsistent obligations implied from any such First Day Motions with such applicable laws and regulations. Therefore, without limiting the generality of those declarations, or limiting the rights and remedies of CCAs (as defined below) under applicable law and regulation, and notwithstanding any other provisions of the First Day Motions or supporting documents or this order to the contrary:

1. PG&E is hereby authorized (a) to perform timely its obligations to the “community choice aggregators” (“CCAs”) as defined in those applicable California laws and regulations, including without limitation AB 117 (2002) and SB 790 (2011) and PG&E Electric Rule 23, including those CCAs appearing in this matter, and (b) to comply timely in accordance with those laws and regulations, including as implemented in the CPUC required and approved CCA Service Agreement (PG&E Electric Sample Form No. 79-1029) (each a “Service Agreement”) between each CCA and PG&E that incorporates and embodies those laws and regulations with the force of law, and (c) to pay timely amounts, including the CCA Customer Revenue, to the applicable CCA, in accordance with applicable California laws and regulations and the Service Agreements.

2. Furthermore, nothing in this Order shall be deemed to suffer or permit the exercise of any right or remedy of any party that would or could directly or indirectly interfere with, impair or otherwise adversely affect the foregoing, especially as it relates to what is defined herein as “CCA Customer Revenue” being billed and collected by PG&E for the CCAs as their statutorily and regulatorily mandated pass through conduit and servicer as described in Bankruptcy Code section 541(d) and in accordance with such applicable laws and regulations and the implementing CCA Service Agreements, since such CCA Customer Revenue pertains to CCA energy so

1 supplied to CCA customers is “public funds” of such CCA governmental units.

2       3. For these purposes, “CCA Customer Revenue” shall mean charges applied by a  
3 CCA to its CCA customers, billed and collected by PG&E as the exclusive statutory and  
4 regulatory billing agent/servicer on behalf of a CCA for energy provided by a CCA to serve its  
5 customers, whether pre- or postpetition, and any funds held or collected by PG&E on account of  
6 such charges, as described in PG&E Electric Rule No. 23, Section Q, Subsections 1, 3 and 4, such  
7 CPUC-approved CCA Service Agreements, and other amounts recoverable from PG&E by CCA  
8 thereunder, consistent with the rights of CCA under section 541(d) of the Code and applicable  
9 non-bankruptcy law and regulations, including by the force of law Service Agreements  
10 implementing those laws and regulations.

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## EXHIBIT B

## EXHIBIT B

RESERVATION OF RIGHTS

Except as provided above, nothing herein nor in any other appearance, pleading, claim, proof of claim, suit, motion or any other writing or conduct shall constitute a waiver by SCPA of any procedural or substantive rights, remedies, claims, or defenses including, without limitation:

(a) the right to have all matters, except monetary “damages claims,” probation violations, and criminal complaints, heard and resolved by the California Public Utilities Commission; (b) the right to have any and all final orders in any and all matters entered only after de novo review by a United States District Court Judge; (c) the right to have any matter heard and tried before an Article III court or, in the event of any applicable Chapter 9 case, such other bankruptcy court; (d) the right to trial by jury in any proceeding as to any and all matters so triable therein, whether or not the same be designated legal or private rights, or in any case, controversy or proceeding related hereto, whether or not such jury trial right is pursuant to statute or the United States Constitution, as well as the rights of State governmental units as such for sovereign immunity or under applicable laws, including the Fifth and Tenth Amendments; (e) the right to have the reference of this matter withdrawn by the United States District Court in any matter or proceeding subject to mandatory or discretionary withdrawal; (f) other rights, claims, actions, remedies, defenses, setoffs, recoupments or other matters to which SCPA is entitled under any agreements or at law or in equity or under the United States Constitution, including those protecting public funds or which may be enforced as police or regulatory powers under Section 362(b)(4) or under 28 U.S.C. § 959; and (g) the right to be served directly with pleadings commencing an adversary proceeding, contested matter or other proceeding or action.

All of the above rights, claims, defenses, and remedies are hereby expressly reserved. The filing of this Statement and participating in these bankruptcy cases, or any of them, shall not be deemed to constitute a concession or admission of jurisdiction in the case or cases or before this court or any other court. SCPA does not consent to the bankruptcy court's jurisdiction or the jurisdiction of any other court. SCPA does not consent to the entry of final judgments, orders and/or decrees by the bankruptcy judge/bankruptcy court. At all times, SCPA demands a jury trial.

1 SCPA does not consent to the bankruptcy court/bankruptcy judge conducting any jury trial.

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**PROOF OF SERVICE**

I am employed in the County of Sacramento; my business address is 555 Capitol Mall, Suite 1500, Sacramento, California 95814. I am over the age of eighteen years and not a party to the foregoing action.

On January 29, 2019, I served the within:

- (1) SONOMA CLEAN POWER AUTHORITY'S STATEMENT OF SUPPORT FOR DEBTORS' MOTION FOR POSTPETITION FINANCING AND RESERVATION OF RIGHTS**
- (2) SONOMA CLEAN POWER AUTHORITY'S STATEMENT OF SUPPORT FOR DEBTORS' PUBLIC PROGRAMS MOTION AND RESERVATION OF RIGHTS**
- (3) DECLARATION OF GEOFFREY G. SYPHERS IN SUPPORT OF SONOMA CLEAN POWER AUTHORITY'S STATEMENT OF SUPPORT FOR DEBTORS' MOTION FOR POSTPETITION FINANCING AND PUBLIC PROGRAMS MOTION AND RESERVATION OF RIGHTS**

**X** (by mail) on all parties in said action by regular, first class United States mail, postage fully pre-paid, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Boutin Jones Inc., mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

**(by personal delivery)** by personally delivering a true copy thereof to the person(s) and at the address(es) set forth below.

**(by overnight delivery)** on the following party(ies) in said action by placing a true copy thereof enclosed in a sealed envelope, with delivery fees paid or provided for, in a designated area for outgoing overnight mail, addressed as set forth below. In the ordinary course of business at Boutin Jones Inc., mail placed in that designated area is picked up that same day for delivery the following business day.

(by facsimile) by transmitting a true copy thereof to the persons at the following telecopier numbers and obtaining electronic confirmation that the transmissions have been received.

Pacific Gas and Electric Company  
77 Beale Street  
PO Box 770000  
San Francisco, CA 94177

***Debtor***

Tobias S. Keller  
Keller and Benvenutti LLP  
650 California St. #1900  
San Francisco, CA 94108

*Attorneys to Debtor*

[x] Service list continued on following page

1 U.S. Trustee ***U.S. Trustee***  
2 Office of the U.S. Trustee / SF  
3 Phillip J. Burton Federal Building  
4 450 Golden Gate Ave. 5th Fl., #05-0153  
5 San Francisco, CA 94102

6 Lynette C. Kelly ***Attorneys for U.S. Trustee***  
7 Office of the United States Trustee  
8 Phillip J. Burton Federal Building  
9 450 Golden Gate Ave. 5th Fl., #05-0153  
10 San Francisco, CA 94102

11 Marta Villacorta ***Attorneys for U.S. Trustee***  
12 Office of the United States Trustee  
13 Phillip J. Burton Federal Building  
14 450 Golden Gate Ave. 5th Fl., #05-0153  
15 San Francisco, CA 94102

16 Kenneth N. Klee ***Request for Special Notice***  
17 David M. Stern  
18 Samuel M. Kidder  
19 KLEE, TUCHIN, BOGDANOFF & STERN  
20 LLP  
21 1999 Avenue of the Stars, Thirty-Ninth Floor  
22 Los Angeles, California 90067

23 Isaac M. Pachulski ***Request for Special Notice***  
24 Debra I. Grassgreen  
25 Gabriel I. Glazer  
26 John W. Lucas  
27 PACHULSKI STANG ZIEHL & JONES LLP  
28 150 California Street, 15th Floor  
San Francisco, CA 94111

29 Joseph Corrigan ***Request for Special Notice***  
30 Iron Mountain Information Management, LLC  
31 One Federal Street  
32 Boston, MA 02110

33 Meagan S. Tom ***Request for Special Notice***  
34 LOCKE LORD LLP  
35 101 Montgomery Street, Suite 1950  
36 San Francisco, CA 94104

37 John D. Fiero ***Request for Special Notice***  
38 Pachulski Stang Ziehl & Jones LLP  
39 150 California Street, 15<sup>th</sup> Floor  
40 San Francisco, CA 94111-4500

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78 *[x] Service list continued on following page*

1           David L. Neale, Esq.  
2           Levene, Neale, Bender, Yoo & Brill L.L.P.  
3           10250 Constellation Blvd., Suite 1700  
4           Los Angeles, CA 90067

***Request for Special Notice***  
California Independent System Operator

4           Keith J. Cunningham  
5           Pierce Atwood LLP  
6           Merrill's Wharf  
7           254 Commercial Street  
8           Portland, ME 04101

***Request for Special Notice***  
California Independent System Operator

7           California Public Utilities Commission  
8           Arcles Aguilar  
9           505 Van Ness Avenue  
10          San Francisco, CA 94102

***Request for Special Notice***  
California Public Utilities Commission

10          PAUL, WEISS, RIFKIND, WHARTON &  
11          GARRISON LLP  
12          Alan W. Kornberg  
13          Brian S. Herman  
14          Walter R. Rieman  
15          Sean A. Mitchell  
16          Neal P. Donnelly  
17          1285 Avenue of the Americas  
18          New York, NY 10019-6064

***Request for Special Notice***  
California Public Utilities Commission

15          John A. Vos, Esq.  
16          1430 Lincoln Avenue  
17          San Rafael, CA 94901

***Request for Special Notice***  
John A. Vos

17          Richard A. Lapping  
18          Trodella & Lapping LLP  
19          540 Pacific Avenue  
20          San Francisco, CA 94133

***Request for Special Notice***  
Valero Refining Company – California

20          **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**  
21          Pursuant to controlling General Orders and LBR, the foregoing document will be served by  
22          the court via NEF and hyperlink to the document. On (date) 1/29/19, I checked the CM/ECF  
23          docket for this bankruptcy case or adversary proceeding and determined that the following  
24          persons are on the Electronic Mail Notice List to receive NEF transmission at the email  
25          addresses stated below:

25          Christina Lin Chen christina.chen@morganlewis.com, christina.lin.chen@gmail.com  
26          John D. Fiero jfiero@pszjlaw.com, ocarpio@pszjlaw.com  
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29          Samuel M. Kidder skidder@ktbslaw.com  
30          Richard A. Lapping rich@trodellalapping.com  
31          John William Lucas jlucas@pszjlaw.com, ocarpio@pszjlaw.com

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4 Marta Villacorta marta.villacorta@usdoj.gov  
5 John A. Vos InvalidEMailECFonly@gmail.com, PrivateECFNotice@gmail.com  
Rebecca J. Winthrop rebecca.winthrop@nortonrosefulbright.com,  
evette.rodriguez@nortonrosefulbright.com

6 ***[x] See attached mailing matrix for additional parties served by first class mail***

7  
8 I declare under penalty of perjury under the laws of the United States of America that the  
foregoing is true and correct.

9 Executed on January 29, 2019, at Sacramento, California.

10  
11   
12 CARMELIA V. DOMINGO

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Label Matrix for local noticing

0971-3

Case 19-30089

Northern District of California

San Francisco

Tue Jan 29 13:32:05 PST 2019

Adam Cronin

101 Hannaford Ct

Folsom, CA 95630-6612

101 Hannaford Ct

Folsom, CA 95630-6612

275 Battery Street, 29th Floor

SEE ATTACHMENT FOR ADDITIONAL ADDRESS

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Arocles Aguilar

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Bankruptcy Group MIC 92E

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Sacramento, CA 94280-0001

CA Franchise Tax Board

Special Procedures Bankruptcy Unit

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Employment Development Section

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Jessica Mullan

Sonoma Clean Power Authority

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Santa Rosa, CA 95404-4908

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1430B Lincoln Ave.  
San Rafael, CA 94901

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San Rafael, CA 94901-2021

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Los Angeles, CA 90071-2300

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)BlueMountain Capital Management, LLC

(u)California Independent System Operator

(u)California Public Utilities Commission

(u)International Brotherhood of Electrical Wo

(u)TRC Companies, Inc.

(u)Valero Refining Company-California

End of Label Matrix  
Mailable recipients 44  
Bypassed recipients 6  
Total 50